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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,080	02/27/2002	Paul D. Unger	TOR6712	5420

7590 10/20/2004

LINGBECK PATENT LAW OFFICE
P.O. BOX 500
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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,080

Applicant(s)

UNGER ET AL.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Response to Amendment

The amendment filed on 8/2/04 has been received and made of record in the application file wrapper has been received. As requested claim 5 has been amended.

Claims 5 and 6 are pending in the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 1.. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,176,664 ("Kalish") in view of U.S. Patent No. 6,171,604 "Mousa").

As regards claim 5, Kalish substantially discloses all features of applicants' invention including a support strip of material (backing strip) having a body-attaching side and an adhesive (6) disposed about and upon said body attaching side, the support strip being made of plastic and may have perforations there through. Kalish also discloses that a type of support strip can be MICROPORE 3M surgical tape, which is inherently flexible (col. 5, lines 18-23 and col. 5, lines 39-50).

Further disclosed is pad member (gauze 10) centrally attached upon the body attaching side of the support strip, at least one wound-healing agent disposed on the pad member (col. 5, lines 24-29) in an oil or wax base and protective strips (12, 14) removably disposed over said body attaching side including the pad member and the at least one wound healing agent (col. 5, lines 30-36 and Fig. 2).

Kalish fails to teach the wound-healing agent is a syrupy substance known as honey. However, Mousa discloses honey preparations, which include whole honey (syrupy honey) and beeswax for use as therapeutic topical treatments (col. 3, line 44-col. 4, line 18).

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It would have been obvious to one having ordinary skill in the art to substitute the active agent in the oil or wax base disclosed in Kalish for the active agent (honey and beeswax) disclosed in Mousa (*i.e.*, substituting one wound healing agent for another), since it is known from Mousa that honey is effective in treating a wide range of conditions including, but not limited to, burns, wounds, cold sores, viral infections, bacterial infections, fungal infections, acne, psoriasis, allergies, rashes, skin dryness, dermatitis, poison ivy insect bites, and similar skin conditions (col. 3, lines 1-10).

Additionally, the applicant should note that beeswax is a wound sealing wax in that it can be used to seal a wound.

As regards claim 6, note the overlapping of the protective strips in Fig. 2. Additionally, the applicants should note that Webster's II New Riverside University Dictionary defines fabric as "1. [a] material structure of connected parts." In this case, the parts of the protective strip are paper and the coating of polypropylene (col. 6, lines 35-37).

Response to Arguments

Applicants' primary argument is that none of the cited prior art describes nor suggests putting wound-sealing wax in combination with honey upon gauze, which is attached to a support strip of material. Applicant's continue to assert that Kalish describes an impregnated bandage, but does not describe combining honey and wound-sealing wax and putting them upon the gauze, and that Mousa describes a honey preparation including beeswax, but does not teach the feature of putting honey

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and wound-sealing wax on gauze which is attached to the support strips. The examiner disagrees with applicants' assessment of the combined teachings of Kalish and Mousa.

Kalish substantially discloses all features of the claimed invention as outlined above in the rejection of claim 5. The lacking feature in Kalish is that the wound-healing agent comprises a syrupy substance known as honey. The examiner has provided Mousa as the teaching reference, which teaches the use of a wound-healing agent comprising a wound sealing wax, beeswax, and honey.

The examiner concedes that Mousa does not disclose applying the wound-healing agent (honey and beeswax) to gauze. However, Kalish discloses applying a wound-healing agent to gauze.

In light of the combined disclosures, one having ordinary skill in the art would have found an obvious to substitute one wound-healing agent on the gauze of Kalish for another wound-healing agent depending upon the desired treatment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
October 18, 2004